

THE HONORABLE MARSHA J. PECHMAN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

A.B., by and through her next friend Cassie
Cordell Trueblood, *et al.*

Plaintiffs,

v.

Washington State Department of Social and
Health Services, *et al.*,

Defendants.

No. 14-cv-01178-MJP

JOINT MOTION FOR PRELIMINARY
APPROVAL OF SETTLEMENT
AGREEMENT

I. MOTION

The Parties jointly move the Court for entry of an order preliminarily approving the Parties' proposed Settlement Agreement, and respectfully request that the Court:

- (a) preliminarily approve the Settlement Agreement;
- (b) authorize the mailing of notice to class members and other forms of notice as described in the Parties' Notice Plan; and
- (c) establish a final settlement approval hearing and process.

II. EVIDENCE RELIED UPON

This motion is based upon the Declaration Of David Carlson In Support Of Joint Motion For Preliminary Approval Of Settlement Agreement (Carlson Decl.), Declaration Of Amber Leaders In Support Of Joint Motion For Preliminary Approval Of Settlement Agreement (Leaders Decl.), and the declaration of Judge Beth Andrus, the settlement neutral, submitted with this Motion, along with the record and documents in the Court's file.

III. BACKGROUND

The Parties have engaged in a settlement negotiation process as described in the agreement filed with the Court in final form on February 5, 2018. *See* ECF 535-1. The Parties worked diligently for more than six months, reaching every milestone in the agreed negotiation process. The Parties met for over 200 hours of negotiation, including mediation with the assistance of a neutral.¹ Carlson Decl. ¶ 7; Leaders Decl. ¶ 5. The resulting Agreement² reflects significant long-term investments in services designed to meet demand for competency services within Constitutional timelines. More importantly, the Agreement represents a plan to reduce demand for those services by diverting potential class members out of the criminal justice and forensic systems altogether, and to stabilize them in the community instead.

The development of the Agreement involved months of meetings with various people who have experienced and worked within the systems being reformed. Carlson Decl. ¶ 7; Leaders Decl. ¶ 6. This included people with mental illness both in jails and in the community; their family members; State Legislators; mental health provider agencies and advocates; Behavioral Health Organizations and advocates; law enforcement; local jails; state and

¹ The Parties wish to acknowledge the invaluable contributions of Judge Beth M. Andrus.

² *See* Agreement, attached as Exhibit A.

1 municipal courts; prosecuting attorneys; defense attorneys; homeless and housing providers and
 2 advocates; employment support providers and advocates; individual clinicians; education
 3 programs for needed clinicians; staff of the state hospitals and the Office of Forensic Mental
 4 Health Services; other parts of the executive branch outside DSHS; Local Legislators and
 5 Executives; and the general public. Carlson Decl. ¶ 7; Leaders Decl. ¶ 6.

6 The Parties engaged the services of Technical Assistance Collaborative (TAC) to
 7 facilitate these stakeholder meetings and to generate a report summarizing their input.
 8 Carlson Decl. ¶ 8. The TAC report reflects widespread agreement by system partners on the
 9 needs of Class Members and potential Class Members, which the Parties have incorporated into
 10 the Agreement. *See* Carlson Decl. Ex. A; Carlson Decl. ¶ 8–9. The Parties also conducted a
 11 stakeholder survey following agreement on May 4, 2018 regarding the key principles and
 12 substantive elements for the final settlement agreement. Leaders Decl. ¶ 7.

13 The Parties believe that the Agreement is a fair settlement that confers significant long-
 14 term benefits on current and future potential Class Members. Carlson Decl. ¶ 15. Counsel
 15 recommends preliminary approval of the Agreement. Carlson Decl. ¶ 15; Leaders Decl. ¶ 8.

16 IV. ARGUMENT

17 A. Legal Standards for Approval of a Class Action Settlement Agreement

18 The law favors compromise and settlement of class action lawsuits. *See, e.g., Churchill*
 19 *Vill. L.L.C. v. Gen. Elec.*, 361 F.3d 566, 576 (9th Cir. 2004); *Class Plaintiffs v. City of Seattle*,
 20 955 F.2d 1268, 1276 (9th Cir. 1992); *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615,
 21 625 (9th Cir. 1982). The Ninth Circuit recognizes the “overriding public interest in settling and
 22 quieting litigation . . . particularly . . . in class action suits[.]” *Van Brokhorst v. Safeco Corp.*,
 23 529 F.2d 943, 950 (9th Cir. 1976); *In re Pac. Enters. Sec. Litig.*, 47 F.3d 373, 378 (9th Cir. 1995);
 24

1 *see also In re Synacor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir. 2008) (“There is a strong
 2 judicial policy that favors settlements, particularly where complex class action litigation is
 3 concerned.”). The Parties recognize that the posture of this case is somewhat unusual in that this
 4 case has been litigated and a judgment and permanent injunction has been issued. However, the
 5 Parties believe that the circumstances of this case warrant application of the prevailing law
 6 regarding settlement of class actions even at this later stage of the litigation.

7 Federal Rule of Civil Procedure 23 governs the settlement of certified class actions:
 8 “[t]he claims, issues, or defenses of a certified class be settled, voluntarily dismissed, or
 9 compromised only with the court’s approval.” Fed. R. Civ. P. 23(e).

10 The Court must consider the settlement as a whole, “rather than the individual component
 11 parts,” to determine whether it is fair and reasonable. *Staton v. Boeing Co.*, 327 F.3d 938, 960
 12 (9th Cir. 2003); *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998) (“The
 13 settlement must stand or fall in its entirety”). Where, as here, the settlement agreement includes
 14 broad prospective relief, the Court may include consideration of that relief in its decision. *See,*
 15 *e.g., Laguna v. Coverall N. Am., Inc.*, 753 F.3d 918, 924 (9th Cir. 2011), *vacated on other*
 16 *grounds*, 772 F.3d 608(9th Cir. 2014); *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1242
 17 (9th Cir. 1998).

18 Federal Rule of Civil Procedure 23(e) sets forth the following procedures for settling a
 19 class action:

- 20 (1) The court must direct notice in a reasonable manner to all class members who
 would be bound by the proposal.
- 21 (2) If the proposal would bind class members, the court may approve it only after a
 hearing and on finding that it is fair, reasonable, and adequate.
- 22 (3) The parties seeking approval must file a statement identifying any agreement
 made in connection with the proposal.

(4) If the class action was previously certified under Rule 23(b)(3), the court may refuse to approve a settlement unless it affords a new opportunity to request exclusion to individual class members who had an earlier opportunity to request exclusion but did not do so.

(5) Any class member may object to the proposal if it requires court approval under this subdivision (e); the objection may be withdrawn only with the court's approval.

Id.

Judicial review of a proposed class settlement typically requires two steps: a preliminary approval review and a final fairness hearing. Preliminary approval is not a commitment to approve the final settlement; rather, it is a determination that "there are no obvious deficiencies and the settlement falls within the range of reason." *Smith v. Professional Billing & Management Services, Inc.*, 2007 WL 4191749, *1 (D.N.J. 2007 (citing *In re Nasdaq Market-Makers Antitrust Litig.*, 176 F.R.D. 99, 102 (S.D.N.Y. 1997)). See also *Nat'l Rural Telecomms. Coop. v. DIRECTTV, Inc.*, 221 F.R.D. 523, 525 (C.D. Cal. 2004); MANUAL FOR COMPLEX LITIGATION (Fourth), § 21.632 at 320 (2004).

Thus, the Court may grant preliminary approval of a settlement and direct notice to the class if the settlement: "(1) appears to be the product of serious, informed, non-collusive negotiations; (2) has no obvious deficiencies; (3) does not improperly grant preferential treatment to class representatives or segments of the class; and (4) falls within the range of possible approval." *Nen Thio v. Genji, LLC*, 14 F. Supp. 3d 1324, 1333 (N.D. Cal. 2014). This initial determination of fairness can be made on the basis of information already known to the Court. *Id.*

If the settlement is preliminarily approved by the Court, then notice of the proposed settlement and the fairness hearing is provided to class members. At the fairness hearing, class members may object to the proposed settlement, and the Court decides whether the settlement should be approved. Especially at this preliminary phase, the question is not "whether

1 the final product could be prettier, smarter or snazzier, but whether it is fair, adequate and free
2 from collusion.” *Hanlon*, 150 F.3d at 1027.

3 **B. The Settlement Agreement is Appropriate for Preliminary Approval**

4 In this case, the parties negotiated at arm’s length over the course of many months to
5 arrive at a Settlement Agreement that results in comprehensive changes or enhancements to the
6 forensic mental health system, to the benefit of Class Members and future Class Members.
7 Carlson Decl. ¶¶6–10. The proposed Agreement is patently fair and adequate, and was not the
8 result of collusion between the parties. Class counsel is very experienced in similar class action
9 litigation and recommends that the settlement be approved. Carlson Decl. ¶¶ 13–14.

10 The Agreement requires the State to take action in five substantive areas, described
11 below.

12 1. Competency Evaluations: Expand forensic evaluator capacity and use an
13 improved data system.

14 2. Competency Restoration: Reduce the number of people ordered to restoration
15 services, use outpatient restoration programs with residential supports and case management
16 services, and add capacity to existing restoration services. The alternate restoration facilities
17 will be closed in phases.

18 3. Crisis Triage and Diversion Support: Expand programs in which police and
19 mental health providers work together, expand Mobile Crisis Response Teams, increase and
20 enhance crisis triage and stabilization services, and provide residential supports and case
21 management services for select individuals involved in these systems.

1 4. Education and Training: Expand behavioral health crisis training for emergency
2 dispatchers, jail corrections officers, and police, and provide training and assistance to jails on
3 issues affecting class members.

4 5. Workforce Development: Develop the use of peer support specialists and work
5 with educational institutions to better meet the mental health system's workforce and training
6 needs.

7 The changes described in the Agreement will roll-out in phases in different regions of
8 the State. The Agreement provides greater detail, but the proposal is that Phase One will include
9 the Pierce, Southwest, and Spokane Regions, Phase Two will include only the King Region, and
10 Phase Three will be determined based upon progress and implementation in Phases One and
11 Two. The Agreement also creates a system to monitor the progress of the State to ensure the
12 proposed elements are being implemented, are effective, and if not effective, are being reviewed
13 and modified as needed.

14 **C. The Proposed Notice, Opportunity to Submit Objections, and Fairness**
15 **Hearing Are Sufficient to Safeguard the Interests of Class Members**

16 The Court should also approve the proposed notice and direct that it be provided to class
17 members as described in the notice plan.³ The Parties jointly suggest a plan to provide notice
18 statewide to Class Members.⁴ The Parties believe this notice plan is calculated to provide notice
19 in a reasonable manner to all Class Members. Fed. R. Civ. P. 23(e). This proposed notice
20 adequately summarizes the Settlement Agreement, informs class members where they can get
21 further information, explains how class members can file objections and/or comments, and
22

23

³ Carlson Decl. Ex. B.

24 ⁴ Carlson Decl. Ex. C.

1 informs Class Members of the date and time of the settlement approval hearing. Lastly, should
 2 any objections of substance be made, the Court can provide the objector with an opportunity to
 3 be heard at the final approval hearing.

4 The Parties propose that the Court issue a scheduling order confirming the October 30,
 5 2018 date for a fairness hearing along with preliminary approval of the Settlement Agreement.
 6 The Proposed Order includes a proposed schedule which includes deadlines for: (1) sending class
 7 notice; (2) class members filing comments and objections with the Court; and (3) the filing of a
 8 motion for final approval of the Settlement Agreement.

9 VI. CONCLUSION

10 The Parties respectfully request that the Court:

- 11 (a) preliminarily approve the Settlement Agreement;
- 12 (b) authorize the mailing of notice to the settlement class members and other forms
 13 of notice provided for in the Settlement Agreement; and
- 14 (c) establish a final settlement approval hearing and process.

15 Dated this 16th day of August, 2018.

16 Respectfully submitted,

17 /s/ Kimberly Mosolf

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CERTIFICATE OF SERVICE

I, *Beverly Cox*, state and declare as follows:

I am a citizen of the United States of America and over the age of 18 years and I am competent to testify to the matters set forth herein. I hereby certify that on this 16th day of August 2018, I electronically filed with foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

David Carlson: davidc@dr-wa.org

Kimberly Mosolf: kimberlym@dr-wa.org

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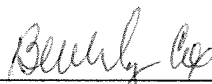
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I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Dated this 16th day of August 2018, at Olympia, Washington.



BEVERLY COX
Legal Assistant